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APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 635

ROBERT VINCENT GARDNER,

Appellant,

—v.—

VINCENT L. BRODERICK, as Police Commissioner of the City of New York, and THE CITY OF NEW YORK,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

JURISDICTIONAL STATEMENT FILED SEPTEMBER 19, 1967
PROBABLE JURISDICTION NOTED JANUARY 29, 1968

IN THE

SUPREME COURT OF THE UNITED STATES

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—v.—

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September 30, 1965	Index Number Assigned. [Petition Filed].
October 26, 1966	Order Special I Transfer to Appellate Division.
February 24, 1967	Notice of Appeal. [To Court of Appeals]
May 2, 1967	Judgment MF 10330. Costs.
May 4, 1967	Remittitur (Not a Book). [From Appellate Division Dated Feb. 9, 1967]
July 14, 1967	Record on Appeal. [Court of Appeals Remittitur Dated July 7, 1967]
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NOTE: Matter in brackets added to clarify docket entries which are set forth as they appear in the docket.

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Notice of Petition

SUPREME COURT
OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index 15178—65

In the Matter of the application of

ROBERT VINCENT GARDNER,

Petitioner,

For an Order Pursuant to Article 78, CPLR,

—against—

VINCENT L. BRODERICK, as Police Commissioner of the City of New York, and THE CITY OF NEW YORK,

Respondents.

SIRS:

PLEASE TAKE NOTICE that upon the annexed verified Petition of ROBERT VINCENT GARDNER, duly executed the 30th day of September, 1965, and upon all the proceedings heretofore had herein the undersigned will make an application to this Court at a Special Term Part I thereof at the Courthouse, 60 Centre Street, New York, New York, on the 26th day of October, 1965 at 9:30 A.M. or so soon thereafter as counsel can be heard for a judgment granting reinstate-

ment of the Petitioner as Patrolman in the New York City Police Department with full back pay, pursuant to Article 78, CPLR, New York County designated as the place of hearing in that Respondents made the determinations complained of in New York County.

PLEASE TAKE FURTHER NOTICE that your Answer & Return must be served at least five (5) days before the return date hereof.

Dated: New York, N. Y., September 30, 1965.

(Endorsements omitted)

• • • • • • •

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Verified Petition

SUPREME COURT
OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

[SAME TITLE]

To the Supreme Court of the State of New York:

ROBERT VINCENT GARDNER, being duly sworn, as and for his petition herein respectfully shows this Court:

First: That he is forty-one years of age and was duly appointed to the Police Department of the City of New York after competitive examination on October 1, 1949.

Second: That he is an honorably discharged veteran of the United States Navy having served therein during war-

Third: That on August 11, 1965 your petitioner was dismissed by the Respondents herein from his position effective August 6, 1965.

Fourth: That such dismissal was arbitrary, capricious and unreasonable and illegal, in that he was not afforded a proper hearing as required by the statutes of the State of New York and the Rules and Procedures of the Police Department of the City of New York.

Fifth: That by virtue of the foregoing your petitioner has been deprived of his pay from August 6, 1965 without authority.

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Sixth: That on August 10, 1964, certain proceedings took place in the Police Department which purported to be a hearing concerning an allegation that your petitioner had failed or refused to waive immunity before the Grand Jury of New York County, the transcript of which has not as yet been made available to your petitioner, and which purported hearing was not authorized by law or departmental rules, and the employment of which device deprived your petitioner of equal protection of the laws and deprivation of property without due process of law.

Seventh: That the Respondent's Answer & Return herein will show that such hearing was without legal authority and that substantively the decision of the Respondents were arbitrary, capricious and unreasonable and without substantial evidence to support the findings.

Eighth: That Petitioner demanded that all pending charges be tried together under proper departmental Rules & Procedures, which demand was refused to the prejudice

of the Petitioner, and was in direct violation of the Departmental Rules & Procedures guarantee of a speedy trial.

WHEREFORE your Petitioner prays for an Order directing the Respondents to restore Petitioner to his position as Patrolman with full back pay and such other relief as to the Court may seem just and proper.

/s/ ROBERT V. GARDNER

(Verification omitted in printing)

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Answer and Return

SUPREME COURT
OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

[SAME TITLE]

To the Supreme Court of the State of New York:

The Answer and Return of the above-named respondents respectfully shown to this Court, makes the following allegations:

1. Deny each and every allegation contained in paragraphs of the petition designated "Fourth", "Fifth" and "Seventh".

2. Deny each and every allegation contained in paragraph of the petition designated "Sixth", except admit

that a hearing was held at Police Headquarters pursuant to notice, on the charge that the petitioner refused to waive immunity before the Grand Jury of New York County.

3. Deny each and every allegation contained in paragraph of the petition designated "Eighth", except admit that petitioner demanded that all pending charges be tried together.

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As and for a First Defense, Respondents Affirmatively Allege:

4. Section 2/36.6 of the Amendments of the Rules and Procedures of the Police Department of the City of New York provides as follows:

"2/36/6 The following are applicable to members of the force:

"Article 1, Section 6 of the New York State Constitution provides in part:

. . . any public officer, who, upon being called before a Grand Jury to testify concerning the conduct of his office or the performance of his official duties, refuses to sign a waiver of immunity against subsequent criminal prosecution, or to answer any relevant question concerning such matters before such Grand Jury, shall by virtue of such refusal, be disqualified from holding any other public office or employment for a period of 5 years, and shall be removed from office by the appropriate authority or shall forfeit his office at the suit of the attorney-general

(G.O. 17, s. 1965)"

5. Section 1123 of the Charter of the City of New York provides the following:

"If any councilman or other officer or employee of the city shall, after lawful notice or process, wilfully

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refuse or fail to appear before any court or judge, any legislative committee, or any officer, board or body authorized to conduct any hearing or inquiry, or having appeared shall refuse to testify or to answer any question regarding the property, government or affairs of the city or of any county included within its territorial limits, or regarding the nomination, election, appointment or official conduct of any officer or employee of the city or of any such county, on the ground that his answer would tend to incriminate him, or shall refuse to waive immunity from prosecution on account of any such matter in relation to which he may be asked to testify upon any such hearing or inquiry, his term or tenure of office or employment shall terminate and such office or employment shall be vacant, and he shall not be eligible to election or appointment to any office or employment under the city or any agency.

(G.O. 17, s. 1965)"

6. By letter dated August 6, 1965, the Police Commissioner at that time, Vincent L. Broderick, was advised by the Office of the District Attorney, New York County, that petitioner refused to sign a limited waiver of immunity from prosecution before the Grand Jury, New York County in connection with a pending investigation, as required under the provisions of said Article I, Section 6 of the Constitution of the State of New York, and Section 1123

of the Charter of the City of New York. A copy of said letter, and a copy of the official transcript of the testimony taken before the Grand Jury, are annexed hereto and Marked Schedule "A" and "B" respectively.

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7. On the same date as aforementioned, petitioner was served with a Notice of Hearing, which directed him to appear before a Trial Commissioner in the Board Room of Police Headquarters, 240 Centre Street, New York, N.Y., on the 10th day of August, 1965, to show cause why his employment, as a member of the Police Department, should not be "terminated" and his office "vacated", as prescribed by the provisions of law heretofore quoted herein. A copy of said notice is annexed hereto, and marked Schedule "C".

8. On the 10th day of August, 1965, and at the time and place stated in the aforesaid Notice, the petitioner duly appeared with counsel representing him, before Hon. Leonard E. Reisman, then Deputy Commissioner in charge of Legal Matters of the Police Department of the City of New York, who had been duly authorized. This matter was tried, heard, publicly examined into, and investigated in the manner required by law, in accordance with the Rules and Procedures of the Police Department, and full opportunity was given to petitioner to be heard in his own defense. A copy of the transcript of said proceedings is annexed hereto, and marked Schedule "D".

9. After the trial, hearing, and investigation were terminated, the charge and specification, testimony taken, and proceedings had, were duly considered by the aforesaid Trial Commissioner, who determined thereafter, in the

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exercise of his best judgment and discretion, that the peti-

tioner was guilty of said charge. He thereupon recommended that the petitioner's office be vacated and his services terminated by operation of law. A copy of said report, dated August 11, 1965, with findings and recommendation, is annexed hereto, and marked Schedule "E".

10. On the same date, said findings and recommendation were referred for final determination to the respondent, Police Commissioner of the City of New York, who was at that time, Hon. Vincent L. Broderick.

11. After an inquiry and consultation with Hon. Leonard E. Reisman, then Deputy Commissioner, said charge and specification, findings and recommendation were duly considered by the said Police Commissioner at that time.

12. After having approved of the aforesaid findings and recommendation of the Deputy Commissioner, the Police Commissioner caused an order to be made and entered, declaring, ordering and adjudging that the petitioner was guilty of the said charge, more particularly set forth in said order, and ordering the petitioner's office to be vacated, effective August 6, 1965, and his employment, in the Police Department of the City of New York, terminated, by operation of law. A copy of the aforementioned order (of which notice was given in Special Orders No. 196 for

the year 1965) is annexed hereto, and marked Schedule "F".

13. On August 11, 1966, petitioner was notified by Louis L. Stutman, Chief Clerk of the Police Department, of the action taken by the Police Commissioner in terminating

his employment and vacating his office. A copy of said notice is annexed hereto, and marked Schedule "G".

14. An extract from the Amendments to the Rules and Procedures of the Police Department of the City of New York, in force at the time of the commission of the offense charged, and applicable to the case of the petitioner, is annexed hereto, and marked Schedule "H".

15. This Answer and the Schedules annexed hereto contain, as directed by statute, all proceedings had herein by the Police Commissioner of the City of New York.

16. The termination of petitioner's services in the Police Department of the City of New York, was, in all respects, legal and proper, and effected in conformity with, and in full compliance with the Constitution and the Laws of the City and State of New York.

17. Petitioner was afforded all of the rights and protections of the provisions of the Constitution of the State of New York, the Civil Service Law, the Administrative Code of the City of New York, the Rules and Regulations

of the City Civil Service Commission, and the Rules and Procedures of the Police Department of the City of New York.

18. Petitioner was afforded the opportunity of a hearing, the right of representation by counsel, the right of confrontation, and all of the rights and privileges which constitute due process of law.

19. The determination of the Police Commissioner at that time, terminating the petitioner's services in said De-

partment, was founded upon good and sufficient reasons, and therefore was not arbitrary, capricious, unreasonable or illegal, as alleged.

WHEREFORE, respondents pray for a judgment denying the application and dismissing the petition, with costs.

(Endorsement and verification omitted.)

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Schedule "A"

(N.Y. District Attorney Letterhead)

August 6, 1965

Honorable Vincent L. Broderick
Police Commissioner
Police Headquarters
240 Centre Street
New York, New York

Dear Commissioner Broderick:

Please be advised that the following member of the Police Department, Patrolman Robert V. Gardner, Shield No. 18984, assigned to the 5th Precinct, upon appearing before the Second August, 1965 Grand Jury of the County of New York, pursuant to the service of a grand jury subpoena issued in connection with an investigation to determine whether there has been in existence a conspiracy to commit the crimes of bribery of a public officer in relation to violations of the gambling laws of the State of New York, refused to sign a limited waiver of immunity as required under the Constitution of the State of New York and the Charter of the City of New York. As you

undoubtedly know by refusing to sign such waiver, he refused to be questioned about matters relating to his official conduct.

Since it was not the intention of the District Attorney to request the Grand Jury to confer immunity upon him, he was not questioned.

Very truly yours,

/s/ PETER D. ANDREOLI
Peter D. Andreoli
Assistant District Attorney

PDA: jmg

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Schedule "B"

SUPREME COURT
OF THE STATE OF NEW YORK

GRAND JURY OF THE COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

vs.

JOHN DOE *et al.*,

New York, N.Y., August 5, 1965

Before:

A QUORUM OF THE SECOND AUGUST 1965 GRAND JURY
Presented by: PETER D. ANDREOLI, Esq., PETER KOSTE, Esq., Assistant District Attorneys

ALFRED PIEKARSY, EDWIN MARTINEZ, Grand Jury Reporters

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ROBERT VINCENT GARDNER, Patrolman, Police Department of the City of New York, appeared as a witness, but was not sworn, stated as follows:

By Mr. Andreoli:

Mr. Andreoli: Let the record show that we are not requesting the witness to be sworn at this time.

Q. What is your name, shield and assignment? A. Robert Vincent Gardner, shield 18984, assigned to the 5th Precinct.

Q. Now, Patrolman Gardner, this Grand Jury is conducting an investigation to determine whether or not there has been a conspiracy, in existence, between various members of the Police Department and various gamblers throughout the County of New York to bribe public officers, namely, police officers, for the purpose of permitting these gamblers to operate illegally and unlawfully in the County of New York, without police interference. You understand the nature of the— A. Yes.

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Q. —of this inquiry? A. I understand.

Q. Isn't it a fact, Mr. Gardner, I think this has been explained to you on prior occasions; is that not so? A. Well, the prior occasion was very brief and I didn't absorb.

Q. We will go over it again, but on June 25, 1964, I believe '65, this was explained to you; is that correct? A. Briefly.

Q. '64, but in any event, at that time, as far back as 1964, June, you were aware of this inquiry; is that correct? A. Yes.

Q. Now, let—I'll explain it to you again, sir. Now, do you fully understand the nature of the inquiry? A. Yes.

Q. I see. Now, you understand that under the Constitution of the United States, as well as the Constitution of the State of New York, no person can be compelled to give testimony against himself, that is testimony that would incriminate him, he has the right, absolute right to

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refuse to answer any question which would tend to incriminate you. You understand this; is that correct? A. I understand.

Q. You understand also, sir, that under the Constitution of the State of New York and the City Charter, as well, that public officer, police officer, or anyone else holding public office, who wishes to retain that position, is required, by law, when called before a Grand Jury and asked questions concerning the conduct of his public office or the performance of his official duties or the way he dealt with official records, anything concerning the performance of that duty, that he must sign a waiver of immunity, otherwise he may forfeit his position; do you understand that? A. Yes, you explain that.

Q. That was all explained to you. Now, do you have an attorney Mr.—Patrolman Gardner? A. Yes, as I explained to you, outside, he's not present at this time, and I would respectfully request the waiver so that my attorney and I can both review it and then come to a conclusion.

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Q. Let's get the record clear then, you were first called before the Grand Jury on June 25, 1964; some ten days later, you employed an attorney; is that correct? A. Approximately.

Q. What is the name of the attorney you then employed? A. Mr. Padowski.

Q. And did Mr. Padowski, continue to represent you in this matter from that time on? A. In the Police Department matter, article 78.

Q. And he has represented you in matters relating to this inquiry; isn't that correct? A. Not particularly this inquiry. This is the first occasion on this here inquiry.

Q. Yes, then you were served with a subpoena in this matter to appear before a Grand Jury on June 29th was it, of this year; isn't that correct? A. Yes.

Q. And you, at that time, the matter was further adjourned to July 29th; isn't that correct? A. Yes.

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Q. And you had an attorney, again? A. Yes, on both occasions.

Q. And then it was subsequently adjourned to this day? A. Yes.

Q. That's correct; so that you have been aware of the fact that you were being called upon to appear before this Grand Jury in this inquiry? A. Yes.

Q. For sometime; is that correct? A. In reference to the waiver here, my attorney or I, have never seen the waiver, only down here.

Q. The point is, you have had all this notice; is that correct? A. But not to review the waiver.

Q. I see. And your attorney is not here this morning? A. No, sir.

Q. You know he hadn't called the District Attorney's Office? A. Well, you informed me of that, that he hadn't called you.

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Q. Is that correct? A. You informed me that he hadn't called you.

Q. Well, did he tell you he was going to call this office? A. No, he didn't say.

Q. Did he tell you he had called this office? A. No, he did not.

Q. Now, what is it that your attorney wishes you to do then? A. Well, I myself, would like to get the waiver and review it with him, being he's the attorney and he is more apt on legal matters than I.

Q. Then, I take it, this morning you are not prepared to sign a waiver of immunity? A. No, sir.

Q. And this morning you are refusing to sign a waiver of immunity? A. Well, if my lawyer showed, I'd—and had time to review, I'd have to sign it.

Q. I see. Then we will ask to have this piece of paper, titled, People of the State of New York against John Doe

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et al., waiver of immunity, currently in blank, marked as Grand Jury Exhibit 1.

(Marked Grand Jury Exhibit 1, in evidence.)

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By Mr. Andreoli:

Q. You have seen this document before, have you not? A. In this office I have.

Mr. Andreoli: In view of the witness' statement that he's not able to sign the waiver of immunity today, he is requesting time, I will request this grand jury to direct this witness to appear before this grand jury at 10:30 tomorrow morning.

I will, also, ask the foreman to direct the witness to take the document he now has in his hand, marked

Grand Jury Exhibit Number 1, with him and to return with that document tomorrow morning.

The Witness: May I make a statement, Mr. Andreoli?

By Mr. Andreoli:

Q. I am requesting the foreman to direct you to appear here tomorrow morning; do you understand that, Mr. Gardner? A. Yes, sir.

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The Foreman: The District Attorney wants you—

The Witness: I, respectfully, request an additional day. I have the Police Department charges against me and I have to appear in the Police Department trial room tomorrow.

Mr. Andreoli: What time?

The Witness: 12:30.

Mr. Andreoli: The request is for you to appear at 10:30, Mr. Gardner.

I am requesting that he be directed to appear 10:30 tomorrow morning, Mr. Foreman.

The Foreman: Do you understand that, Mr. Gardner?

The Witness: I am just requesting an additional day so I could clear up the Police Department matter.

The Foreman: The District Attorney would like to have you here at 10:30, would like to have you here at that time.

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The Witness: I'd like to be, but I'm fighting for my job in the Police Department at the trial room.

Mr. Andreoli: Mr. Gardner, this proceeding is entirely separate. Any proceeding which may or may not take place in the Police Department may be protracted.

The question to be resolved is whether or not this witness is prepared to sign a waiver of immunity and appear before this grand jury and, therefore, I have requested that he be directed to appear here at 10:30 tomorrow morning with his attorney and with the Exhibit 1.

The Foreman: Mr. Gardner, do you understand that you are to appear here tomorrow morning at 10:30?

The Witness: I still submit my request for an additional day. I don't think one day is going to make one difference.

Mr. Andreoli: Have your attorney appear with

you.

The Witness: He is scheduled to appear with me in the trial room, too.

Mr. Andreoli: 10:30 have your attorney appear here, you can make any applications you have at that time.

All right, will you step out, Mr. Gardner.

(Witness excused).

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PEOPLE vs. JOHN DOE, *et al.*, August 6, 1965

Before:

A QUORUM OF THE SECOND AUGUST 1965 GRAND JURY

Presented by: PETER ANDREOLI, Esq., PETER KOSTE, Esq.
Assistant District Attorneys

RAYMOND LINKLETTER, Grand Jury Reporter

* * * * * * *

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ROBERT VINCENT GARDNER, Patrolman, Police Department of the City of New York, recalled as a witness, but was not sworn, further testified as follows:

By Mr. Andreoli:

Q. What is your name, shield and assignment? A. Robert Vincent Gardner, Shield 18984.

Q. And your rank? A. Patrolman of the 5th.

Q. You are here again pursuant to the direction of this Grand Jury, is that correct? A. Correct.

Q. You were here yesterday, is that correct? A. Yes, sir.

Q. At that time you requested an adjournment? A. Yes, sir.

Q. Is that correct? A. Yes.

Q. Your attorney is present with you today? A. Yes, sir, he's outside.

Q. What is his name and address? A. Ronald Padowski, 15 Park Row.

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Q. Is this the same attorney who was representing you since sometime in July of 1964? A. Yes.

Q. Now, yesterday you were informed, as you have been informed on prior occasions, that this Grand Jury was inquiring and seeking to determine whether or not a conspiracy existed in New York County to commit the crimes of bribery of public officers, namely police officers and more specifically to determine whether or not bribery monies had been paid by various gamblers to various members of the police department in order to secure police protection from arrests and suppression of this illegal gambling, is this correct? A. Yes, I understand your explanation.

Q. You understand the nature of the inquiry? A. Yes.

Q. You discussed that with your attorney? A. Yes.

Q. You understand further that under the Constitution of the United States, as well as the Constitution of New York, no one can be compelled to testify against himself, and that he has a right, the absolute right to refuse to

answer any questions that would tend to incriminate him.

Do you understand that? A. Yes.

Q. And have you discussed that with your attorney? A. Yes.

Q. You understand then, that under the Constitution of New York, as well as the Charter of the City of New York, that a public officer, which includes a police officer, when called before a Grand Jury to answer questions concerning the conduct of his public office and the performance of his duties is required to sign a waiver of immunity if he wishes to retain that public office? A. Yes.

Q. Have you discussed that with your attorney? A. Yes.

Q. And under that, are there any questions of law that concern that matter that you have not discussed with your

attorney at this time concerning which you have been apprised of? A. Until now? On the advise of my attorney

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I have been regarded as a target of this investigation, and you have no authority to question me.

Q. Mr. Gardner, as you have already been told, you have been called here as a public officer, a police officer, to testify concerning the performance of your duties as a police officer, and the conduct of those duties by you.

Do you understand that that is the basis upon which you are being examined? A. Yes, in reference to the Police Department.

Q. All right. Now, therefore, you are now being requested to appear before this Grand Jury as a police officer, and to answer questions concerning this inquiry under a waiver of immunity. A. Not at this time.

Q. The question is, do you intend to sign a waiver of immunity, sir. A. Do you want me to sign this document now?

Q. Yes. You are being asked to testify now, sir. A. I will not sign this document at this time, since it would be inappropriate under the circumstances.

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Q. Make any statement that you wish concerning your refusal, and I take it that you are refusing to sign Grand Jury Exhibit I, which is a waiver of immunity? A. Not at this time, for the reasons stated.

Q. Will you state your reasons? A. I will not sign this document at this time because it would be inappropriate under the circumstances.

Q. That is a statement which you are reading from? A. Yes, sir.

Q. Was that statement prepared by your attorney, Mr. Padowski? A. Yes.

Q. And I will ask you again, are you prepared now at this time to sign this waiver of immunity and testify concerning your conduct in the performance of your duties as a police officer? A. Not at this time for the reasons stated.

Q. Are you refusing to sign a waiver of immunity? A. At this time, yes.

Mr. Andreoli: Will you step outside.

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(Witness excused.)

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Schedule "C"

(Police Dep't Letterhead)

To: Suspended Patrolman Robert V. Gardner
Shield #18984, 5th Precinct

August 6, 1965

The District Attorney of New York County has advised the Police Commissioner that you were called and appeared before the Grand Jury of New York County on the 6th day of August, 1965, and that you refused to waive immunity from prosecution as provided in Section 1123 of the New York City Charter and Article I, Section 6 of the Constitution of the State of New York.

You are, therefore, directed to appear before a Trial Commissioner in the Board Room on the second floor of Police Headquarters, 240 Centre Street, New York, New York, on the 10th day of August, 1965, at 2:30 P.M., to show cause why your employment as a member of the

Police Department should not be terminated and your office vacated as prescribed by the aforesaid provisions of law.

By direction of the Police Commissioner.

/s/ JOHN F. WALSH
John F. Walsh
First Deputy Commissioner

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Schedule "D"

IN THE MATTER OF A HEARING HELD BEFORE HON. LEONARD E. REISMAN, DEPUTY POLICE COMMISSIONER, at Police Headquarters, Borough of Manhattan, on Tuesday, August 10, 1965, to determine whether or not the employment of suspended Patrolman Robert V. Gardner should not be terminated and his office vacated, upon his refusal to waive immunity from prosecution, as provided in Section 1123, of the New York City Charter, and Article 1, Section 6, of the Constitution of the State of New York.

APPEARANCES—

For the Department:

Joseph F. X. Lynch, Esq.
240 Centre Street
New York, N.Y.

For suspended Ptl. Robt. V. Gardner:

Ronald Podolsky, Esq.
15 Park Row
New York, N.Y.

Dep. Com. Reisman: May I see the letter, please?

(Letter dated August 6, 1965 from Peter D. Andreoli, Assistant District Attorney, to Hon. Vincent J. Broderick, Police Commissioner, is handed to Deputy Commissioner Reisman).

Dep. Com. Reisman: We have the appearance noted?

Mr. Podolsky: Ronald Podolsky, 15 Park Row, Manhattan.

Dep. Com. Reisman: All right. This is a hearing convened as a result of a letter dated August 6, 1965

from Peter D. Andreoli, Assistant District Attorney, New York County, advising the Police Commissioner that Patrolman Robert V. Gardner, 5th Precinct, upon appearing before the Second August 1965 Grand Jury of the County of New York, refused to sign a Limited Waiver of Immunity, as required under the Constitution of the State of New York and the Charter of the City of New York. This hearing is to determine whether or not the employment of Patrolman Gardner should be terminated and his office vacated. All right. Proceed.

Mr. Lynch: Pursuant to this hearing, Commismissioner, this hearing was scheduled and a notice was served on the Respondent Patrolman Gardner. I would like to offer a copy of that notice. Counselor, any objection?

Mr. Podolsky: I have no objection, but I have a motion pertaining to that notice—I ask it be vacated as violative of the Rules and Procedures, Chapter 21. I feel that any act that is alleged to

be one of misconduct should proceed under the Rules and Procedures of the Department and that this particular proceeding is outside those rules and

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there is no jurisdiction to proceed in this matter. In addition I would like to call your attention to the fact that there are several other charges outstanding which have been held in abeyance pending the outcome of this. I object to this procedure and request that all three charges, including this one, be tried at once as one action. If this procedure is not followed then the danger of proceeding on this one charge will give rise to the situation where if he is restored by court order in the future we will have two additional charges to face, which charges we are now prepared to defend and in the interim witnesses or evidence may become lost which are now available. I request this be treated as any other charge in the Police Department regulations and U.F. 160 be served in accordance with Rules and Procedures and that this be treated as any other charge without any deviation from the Rules and Procedures as set forth, and I ask this notice be

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vacated, particularly since it is an order to show cause and I do not see or have not been made aware in any reading of the Rules and Procedures for authority in this matter and prejudice would result thereby.

Dep. Com. Reisman: Counselor, this notice is simply just that—it is a notice to your client that under the cases in the Supreme Court of the United States and under the Charter of the City and Con-

stitution of the State, this hearing is authorized to inquire into the very narrow issue of whether or not your client, Patrolman Gardner, did or did not refuse to sign a Limited Waiver of Immunity as provided by law. The fact there are other charges pending has no significance insofar as this limited hearing is concerned. Accordingly your motion is denied and we will proceed. Incidentally, if you do not wish to respond, you need not, but is there any issue apart from the motion you made addressed to the broad concept of the hearing—is there any issue as to the fact or whether your client did or did not refuse to sign a Limited Waiver of Immunity?

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Mr. Podolsky: I feel that is an issue. Yes, sir.

Dep. Com. Reisman: Then we will mark in evidence as Department's Exhibit #1 the letter I referred to at the opening—letter dated August 6, 1965 from Mr. Andreoli. And we will mark in evidence as Department's Exhibit #2 a copy of the notice served on the Respondent, Patrolman Gardner, dated August 6, 1965.

Mr. Podolsky: I object to all entries of evidence.

Dep. Com. Reisman: All right.

(Letter dated Aug. 6, 1965 from Peter D. Andreoli, Asst. Dist. Atty. to the Hon. Vincent L. Broderick, Police Commissioner, is marked Dept.'s Exhibit #1—8-10-65. S.O.).

(A copy of the notice served on Ptl. Gardner dated Aug. 6, 1965 is marked Dept.'s Exhibit #2—8-10-65. S.O.).

Mr. Lynch: The Department calls Mr. Peter D. Andreoli, Assistant District Attorney, New York County.

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PETER D. ANDREOLI, Assistant District Attorney, New York County, 155 Leonard St., N.Y., having been duly sworn, testified as follows:

By Mr. Lynch:

Q. Mr. Andreoli, how long have you been an Assistant District Attorney? A. About seventeen-eighteen years.

Q. What is your present assignment?

Mr. Podolsky: A little louder.

A. I am assigned to the Rackets Bureau of the District Attorney's Office.

Q. And on August 5th and 6th of this year did you appear before the Grand Jury from New York County, specifically the Second August 1965 Grand Jury? A. Yes.

Q. What was the nature of that appearance? A. It was a proceeding entitled John Doe *et al.*, being presented before that Grand Jury.

Q. And was the Respondent Patrolman Gardner called to that hearing? A. Yes.

Q. Was he present on August 5th, 1965? A. Yes.

Q. And did he make—was he placed under oath, by the way, Mr. Andreoli? A. He was not.

Q. Did he make a statement to that Grand Jury? A. He

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did.

Q. Was he tendered a Waiver of Immunity? A. On August 5th he was.

Q. What was—what were his instructions in connection with the Waiver of Immunity? A. After having been advised of his constitutional rights under the City Charter and State Constitution with reference to his position as a police officer and after having been instructed that the Grand Jury wished to question him concerning the conduct of his office in the performance of his duties, he was asked to sign a Waiver of Immunity which was marked Grand Jury Exhibit #1 at that time. He requested an adjournment and requested permission to take Exhibit #1 with him to show it to his attorney. He was granted that permission and directed by the Grand Jury to appear 10:30 the following day.

Q. Did he appear on the following day, Mr. Andreoli? A. He did.

Q. Did he make any further statement to that Grand Jury? A. He was again advised of his rights and the nature of the proceeding, which was an inquiry into—by the Grand Jury to determine whether or not the crimes of

conspiracy to bribe public officers—the bribery of public officers was committed. I believe it was explained more specifically before the Grand Jury to him that the inquiry was to find out whether or not bribes had been paid by gamblers to police officers for the purpose of permitting gambling to continue unlawfully and to aid in the continuance of that unlawful gambling. He was then asked if he was prepared to sign the Waiver of Immunity, Grand Jury Exhibit #1, and he said it was inappropriate at that time—he was refusing to sign it. I believe he indicated—his attorney told him he was a target of an investigation. The minutes have the exact language.

Q. Mr. Andreoli, I show you a stenographic transcript of the hearing on August 4 and August 5. Have you read that, sir? A. (Examining) Yes.

Q. Do they substantially reflect what questions were put by you and statements made by the Respondent, Patrolman Gardner? A. They do.

Mr. Lynch: I would like to offer them as Department's Exhibit #3.

Mr. Podolsky: Since I am objecting to the entire proceeding, I am objecting to the introduction of the documents.

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Dep. Com. Reisman: Mark them collectively, August 5 and August 6, as Department's Exhibit #3.

(Grand Jury transcript previously referred to is marked Dept.'s Exhibit #3—8-10-65. S.O.).

Q. Mr. Andreoli, at the hearing of August 6 before the Grand Jury, did the Respondent make any statement in connection with his signing a Waiver of Immunity that you had given him on August 5? A. He said he would not sign it on advice of counsel—that it was inappropriate and he was the target of an investigation; and he in fact did not sign Grand Jury Exhibit #1, which is the Waiver of Immunity, and he did not testify.

Q. I show you a piece of paper that is headed; "Waiver of Immunity", is that the Waiver of Immunity he was asked to sign? A. That is Grand Jury Exhibit #1.

Mr. Lynch: I would like to offer a Xerox copy of the Waiver of Immunity as Department's Exhibit #4.

Dep. Com. Reisman: The same objection?

Mr. Podolsky: Same objection, yes, sir.

Dep. Com. Reisman: Mark it as Dept.'s Exhibit #4.

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(Waiver of Immunity previously marked Grand Jury Exhibit #1 is marked Dept.'s Exhibit #4—8-10-65—S.O.).

Q. Mr. Andreoli, did you have any further conversations with the Respondent or his Counsel that would be—that contained any substance that would be of some information to this hearing? A. No, sir.

Mr. Lynch: I have no other questions of Mr. Andreoli.

By Mr. Podolsky:

Q. Now, sir, Mr. Gardner appeared pursuant to a subpoena, is that correct? A. That is correct.

Q. Now, is Mr. Gardner or is he not a target of the investigation of that particular Grand Jury? A. The word "target" is a meaningless word as far as—

Q. Is—

Dep. Com. Reisman: Just a minute. Let him finish his answer.

A. If the counsel means to inquire whether or not he was a possible defendant, the answer is yes, depending on what the evidence, before the evidence—before the Grand Jury happened to be.

Q. In other words he is under investigation by the Grand

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Jury as a potential defendant, is that correct? A. He is potentially a defendant.

Q. And he was asked to sign this document, Department's Exhibit #4, is it?

Dep. Com. Reisman: Yes.

Q. Exhibit #4, and then and there proceed to testify, is that correct? A. I don't understand your question. He was asked that question in June of 1964. He was asked that question on August 5 of 1965 and he was also asked that same question on August 6, 1965.

By Dep. Com. Reisman:

Q. Mr. Andreoli, was it your intention if the Respondent signed a Limited Waiver of Immunity to question him? A. Yes, sir.

By Mr. Podolsky:

Q. And you requested him to sign it and then and there testify? A. He would then be sworn—then he would be asked questions, yes.

Q. Immediately? A. Immediately.

Mr. Podolsky: Excuse me (Speaking to the Respondent).

Mr. Podolsky: No further questions.

Mr. Lynch: That concludes the Department's

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presentation.

Dep. Com. Reisman: Anything further?

Mr. Podolsky: A motion at this time that the Department has rested. The evidence—

Mr. Lynch: May I interrupt counsel for the record—may I, if you please, Counselor? The Grand Jury minutes that have been offered as Dept.'s Exhibit #3 were obtained pursuant to a court order which has been examined by counsel.

Dep. Com. Reisman: Why don't you make it Dept.'s Exhibit #5, the court order and affidavit to keep the record intact.

(Court Order and Affidavit previously referred to is marked Dept.'s Exhibit #5—8-10-65—S.O.).

Dep. Com. Reisman: Your motion, Mr. Podolsky.

Mr. Podolsky: At this time the Respondent moves to dismiss not only on the basis of my prior motion this hearing is apart from the Rules and Procedures, but also from a substantive point of view because it has been clearly demonstrated that Mr. Gardner was a target of the investigation and that there is

no authority on the part of the Grand Jury to subpoena and examine a target of investigation. I will cite as my authority People against Steuding & Ryan, 6 N.Y. 2nd 214.

Dep. Com. Reisman: And People against De Feo—308.

Mr. Podolsky: The De Feo case is also in point somewhat but Steuding is directly on point. Mr. Gardner's presence in that room at that time was illegal and anything that transpired in that room at that time was illegal and not binding on Mr. Gardner, and also the request for the signing, rather the execution as called for by statute was not in proper

form and I request the case be dismissed on the merits.

Dep. Com. Reisman: Decision is reserved. That's all.

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Schedule "E"

(Police Department Letterhead)

August 11, 1965

Report and Recommendations to the Police Commissioner in the Matter of:

Suspended Patrolman Robert V. Gardner, Shield 18984, 5th Precinct.

After hearing held before the undersigned on August 10, 1965, minutes attached hereto, the following findings were made:

Suspended Patrolman Robert V. Gardner, Shield 18984, was called and appeared before a Grand Jury of New York County on August 6, 1965, the said Grand Jury there and then conducting an investigation to determine whether or not the crime of conspiracy to bribe a public officer had been committed, the said suspended Patrolman Robert V. Gardner refused to waive immunity from prosecution as required by Section 1123 of the New York City Charter.

It is therefore recommended that the employment of the said suspended Patrolman Robert V. Gardner be terminated and his office vacated effective as of August 6, 1965.

/s/ Leonard E. Reisman
Leonard E. Reisman
Deputy Commissioner
Legal Matters

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Schedule "F"

(Police Department Letterhead)

Suspended Patrolman Robert V. Gardner, Shield #18984, 5th Precinct, having appeared before the Grand Jury of New York County on the 6th day of August, 1965, and having refused to waive immunity from prosecution as required by Section 1123 of the New York City Charter, and a hearing having been held in connection therewith, his employment in the Police Department of the City of New York is terminated and his office vacated effective August 6, 1965.

/s/ VINCENT L. BRODERICK
Vincent L. Broderick
Police Commissioner

Dated: August 11, 1965

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Schedule "G"

(Police Department Letterhead)

August 11, 1965

Mr. Robert V. Gardner
84-10 Penelope Avenue
Rego Park, New York

Dear Sir:

I have been directed by the Police Commissioner, Vincent L. Broderick, to advise you that you having appeared

before the Grand Jury of New York County on the 6th day of August, 1965, and having refused to waive immunity from prosecution as required by Section 1123 of the New York City Charter, and a hearing having been held in connection therewith, your employment in the Police Department of the City of New York is terminated and your office vacated effective August 6, 1965.

Very truly yours,

LOUIS L. STUTMAN
CHIEF CLERK

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Schedule "H"

AMENDMENTS TO THE RULES AND PROCEDURES

• • • • • • •

New Paragraph 2/36.6 is added to read:

2/36.6 The following are applicable to members of the force:

Article 1, Section 6 of the New York State Constitution provides in part:

• • • • • • •

(text omitted as it is identical with paragraph "4" of the Answer & Return)

• • • • • • •

Section 1123 of the Charter of the City of New York provides:

• • • • • • •

(Text omitted as it is identical with paragraph "5" of the Answer & Return)

Reply

SUPREME COURT
OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

[SAME TITLE]

Petitioner as and for his reply alleges:

First: Denies the allegations of paragraphs 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18 and 19 of the answer & Return.

Second: Petitioner was not convicted of any act of misconduct or incompetence as a prerequisite to his dismissal, as the alleged requirements of office or acts of misconduct or incompetence as set forth in paragraphs 4 & 5 of the answer, and the alleged charge as set forth in Exhibit (Schedule) C of the return are contrary to the Constitution of the United States and of no force and effect.

Third: Respondents did not afford a proper hearing of the alleged charges and of pre-existing charges in that procedures required by the Departmental Rules & Procedures were not followed.

WHEREFORE Petitioner demands judgment requested in the Petition together with such further relief as to the Court may seem just and proper.

Dated: New York, New York,
October 18, 1966.

(Endorsements omitted)

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Order

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 9th day of February, 1967.

Present:

HON. BERNARD BOTEIN,
Presiding Justice,

" GEORGE TILZER,
" BENJAMIN J. RABIN,
" G. ROBERT WITMER,
Justices.

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[SAME TITLE]

The above-named petitioner having moved at Special Term of the Supreme Court, New York County, pursuant to Article 78 of the Civil Practice Law and Rules, for a review by the court of a determination of the respondent Police Commissioner, dated August 11, 1965, dismissing petitioner from the position of Patrolman in the Police Department of the City of New York, after a hearing upon charges of misconduct, and for other relief;

And this proceeding having been transferred by order of said court, entered on the 26th day of October, 1966, to this Court for review and determination,

And said proceeding having duly come on to be heard before this Court and having been argued by Mr. Ronald Podolsky, of counsel for the petitioner, and by Mr. Robert

T. Hartmann, of counsel for the respondents; and due deliberation having been had thereon,

It is unanimously ordered that the determination of the respondents be and the same hereby is confirmed and the petition dismissed with $50 costs and disbursements to the respondents.

ENTER:

HYMAN W. GAMSO
Clerk

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Judgment

SUPREME COURT
OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

[SAME TITLE]

The above named petitioner having moved at Special Term of the Supreme Court, New York County, pursuant to Article 78 of the Civil Practice Law and Rules, for a review by the court of a determination of the respondent, Police Commissioner, dated August 11, 1965, dismissing petitioner from the position of Patrolman in the Police Department of the City of New York, after a hearing upon charges of misconduct, and for other relief;

And this proceeding having been transferred by order of said court, entered on the 26th day of October, 1966, to the Appellate Division of the Supreme Court, First Department, and that Court, in an order entered in the office of the Clerk of said Appellate Division, on the 9th day of

February, 1967, having ordered that the determination of the respondent be confirmed and the petition dismissed with $50—, costs and disbursements to the respondents, and the costs of the respondents having been duly taxed at the sum of $318.34,

Now on motion of J. Lee Rankin, Corporation Counsel, attorney for the respondents, it is

ADJUDGED that the petition be and the same hereby is dismissed, and it is further

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ADJUDGED that the respondents, Vincent L. Broderick as Police Commissioner of the City of New York, and The City of New York, (Municipal Building, New York, 10007, N. Y.) recover of the petitioner Robert Vincent Gardner (84-10 Penelope Avenue, Rego Park, N. Y.) the sum of $318.34 costs as taxed and that said respondents have execution therefor.

Dated: March 2, 1967.

JAMES MCGURRIN
Clerk

Notice of Appeal to the Court of Appeals, State of New York

SUPREME COURT
OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

[SAME TITLE]

SIRS:

PLEASE TAKE NOTICE that the above-named Petitioner, relying solely upon the question involving the validity of Article I, Section Six of the New York State Constitution as pertains to the United States Constitution, Amendments I, V and XIV, hereby appeals as of right to the Court of Appeals of the State of New York, from the order of the Appellate Division of the Supreme Court of the State of New York, First Department dated February 9, 1967 and entered in the Office of the Clerk of the Appellate Division of the Supreme Court of the State of New York, First Department ordering that the determination of the respondent be confirmed and the petition be dismissed with $50.00 costs and disbursements to the respondents without opinion, and from each and every part of said order and the whole thereof.

Dated: New York, N. Y., February 23, 1967.

(Endorsement omitted)

Opinion by Fuld, *Ch.J.*

STATE OF NEW YORK
COURT OF APPEALS

1. No. 181. ——67

In the Matter of the Application of

ROBERT VINCENT GARDNER,

Appellant,

For an Order &c.

vs.

VINCENT L. BRODERICK, as Police Commissioner of the City of New York, & ano.,

Respondents.

FULD, *Ch.J.*:

In this article 78 proceeding, the petitioner seeks reinstatement as a patrolman in the New York City Police Department, claiming that he was dismissed solely for refusing to waive his privilege against self-incrimination and that it was unconstitutional for the Police Commissioner to discharge him on that ground. In August of 1965, a New York County Grand Jury was investigating accusations of bribery and corruption of police officers in connection with illicit gambling operations. The petitioner, then under departmental charges, was subpoenaed to appear before the grand jury. After being advised of the investigation and that the grand jury desired to question

him concerning the performance of his official duties, he was requested to sign a limited waiver of immunity—"to waive immunity from prosecution" for any misconduct in office disclosed by his testimony—as provided in section 1123 of the New York City Charter. (See, also, N.Y. Const., art. I, §6.)[1] The petitioner was also informed that, under

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both the Charter and the Constitution, he was required to sign the waiver and that, if he refused to do so, he would be discharged from his position as a police officer. He refused to execute the waiver and, following an administrative hearing, was dismissed from the force.

It is clear, and was so understood by the petitioner, that section 1123 of the Charter required him, as a condition of his continued employment by the police department, to waive his constitutional privilege against self-incrimination and to answer questions regarding the conduct of his office

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[1] Section 1123 of the City Charter provides, in part, that, if any employee of the City "shall * * * wilfully refuse or fail to appear before * * * any officer, board or body authorized to conduct any hearing or inquiry, or having appeared shall refuse to testify or to answer any question regarding * * * official conduct of any officer or employee of the city or of any * * * county, on the ground that his answer would tend to incriminate him, or shall refuse to waive immunity from prosecution on account of any such matter in relation to which he may be asked to testify upon any such hearing or inquiry, his term or tenure of office or employment shall terminate and such office or employment shall be vacant."

And section 6 of article I of the State Constitution declares, insofar as relevant, that "No person shall * * * be compelled in any criminal case to be a witness against himself, providing, that any public officer who, upon being called before a grand jury to testify concerning the conduct of his * * * office * * * or the performance of his official duties * * *, refuses to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such matters before such grand jury, shall by virtue of such refusal, * * * be removed from his * * * office by the appropriate authority."

and the performance of his official duties. Such provisions have been upheld in the past (see, e.g., *Nelson* v. *Los Angeles County,* 362 U.S. 1) and, although the Supreme Court has indicated that the question may still be an open one (see *Spevack* v. *Klein,* 385 U.S. 511, 516, n. 3; *Stevens* v. *Marks,* 383 U.S. 234, 243), we find no constitutional defect in the statute as it applies to this petitioner.

In *Garrity* v. *New Jersey* (385 U.S. 493), the Supreme Court, deciding that the government may not use "the threat of discharge to secure incriminating evidence" against a public employee, held that a police officer could not be compelled to waive his constitutional privilege against self-incrimination by threats that he would otherwise be removed from office. The testimony obtained under

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such circumstances was ruled to be inadmissible in subsequent criminal proceedings brought against him. This decision undoubtedly had the effect of partially invalidating section 1123 of the New York City Charter as well as section 6 of article I of the New York Constitution. But nothing decided in the *Garrity* case bears on the issue in the present case. If the petitioner before us had executed the waiver required by section 1123 and then testified about misconduct in office, his testimony, though inadmissible in a criminal prosecution, would, nevertheless, have furnished sufficient cause to justify his dismissal from the police force. (Cf. *Ullman* v. *United States,* 350 U.S. 422, 430-431.)

In point of fact, the petitioner did not execute the waiver and stood on his constitutional privilege against self-incrimination when notified that he was to be questioned about malfeasance as a police officer. Such information

patently bore upon his fitness to remain in office, information which the public had a right to know and the petitioner was under a duty to reveal. His refusal to speak on the subject constituted "employee insubordination for failure to give information which * * * the State has a legitimate interest in securing". (*Nelson* v. *Los Angeles County*, 362 U.S. 1, 7, *supra*; see *Spevack* v. *Klein*, 385 U.S. 511, 519, *supra* [*per* Fortas, J., concurring]), and, consequently, he was properly dismissed from the police force. (See *Canteline* v. *McClellan*, 282 N.Y. 166; *Christal* v. *Police Com. of San Francisco*, 33 Cal. App. 2d 564; *Cunningham* v. *Civil Service Com'n*, 48 Hawaii 278; *Fallon* v. *New Orleans Police Department*, 238 La. 531; *Souder* v. *Philadelphia*, 305 Pa. 1.) Although people in public office and on the public payroll may not be compelled to surrender their constitutional privilege against self-incrimination (see *Garrity* v. *New Jersey*, 385 U.S. 493, *supra*), they have no constitu-

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tional right to remain in office when they refuse to discuss with frankness and candor whether they have faithfully performed their duties.

In *Spevack* v. *Klein* (385 U.S. 511, *supra*), the Supreme Court held that an attorney could not be compelled, upon pain of disbarment, to waive his privilege against self-incrimination and testify about his professional conduct. (See, also, *Matter of Cohen*, 7 N Y 2d 488, 498 [dissenting opinion].) However, a lawyer, though licensed by the State —like a doctor, barber or chauffeur—is not, as Mr. Justice Fortas pointed out in his concurring opinion in the *Spevack* case (385 U.S., at p. 520), "an employee of the State. He does not have the responsibility of an employee to account to the State for his actions." The petitioner, however, did

have such a responsibility and his refusal to carry out that responsibility rendered him subject to removal from his position of public trust and confidence.

The order appealed from should be affirmed, without costs.

* * * * * * *

Order affirmed, without costs. Opinion by Fuld, Ch. J. All concur.

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Remittitur

No. 181

COURT OF APPEALS

STATE OF NEW YORK, *ss.*:

PLEAS in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 7th day of July in the year of our Lord one thousand nine hundred and sixty-seven, before the Judges of said Court.

WITNESS,

The HON. STANLEY H. FULD,
Chief Judge, Presiding.

RAYMOND J. CANNON,
Clerk.

REMITTITUR July 7, 1967.

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1. No. 181. 67

In the Matter of the Application of

ROBERT VINCENT GARDNER,

Appellant,

For an Order &c.

—VS.—

VINCENT L. BRODERICK, as Police Commissioner of the City of New York, & ano.,

Respondents.

BE IT REMEMBERED, That on the 15th day of April in the year of our Lord one thousand nine hundred and sixty-seven, Robert Vincent Gardner, the appellant in this cause, came here unto the Court of Appeals, by Ronald Podolsky, his attorney, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the First Judicial Department. And Vincent L. Broderick, as Police Commissioner of the City of New York, & ano., the respondents in said cause, afterwards appeared in said Court of Appeals by J. Lee Rankin, their attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

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WHEREUPON, The said Court of Appeals, this cause having been submitted, after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, without costs. And it was also

further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the Supreme Court of the State of New York, there to be proceeded upon according to law.

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THEREFORE, it is considered that the said order be affirmed, without costs, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

RAYMOND J. CANNON
Clerk of the Court of Appeals
of the State of New York

(Certification omitted in printing)

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Charges and Specifications

THE CITY OF NEW YORK
POLICE DEPARTMENT

Date August 4, 1965

Command—P.C.C.I.U.
Serial No.—43
Disciplinary Records Unit Serial Number—37604

To the Police Commissioner:

I hereby CHARGE Ptl. Gardner, Robert V. 18984 5th
Rank-Title Surname First Name Initial Shield No.
Precinct with VIOLATION OF THE RULES AND PROCEDURES in
Command Squad or Chart No.
that:

SPECIFICATIONS

1. Said Patrolman Gardner, while a member of the Police Force of the Police Department of the City of New York, and, commencing on or about February of the year 1962 and continuing to or about June 24, 1964, did, knowingly, wilfully, wrongfully, unlawfully and corruptly conspire, combine, confederate and agree with other members and former members of the Police Department of the City of New York, including: Lawrence Jessup, John J. Smith, John A. Murphy, Stephen G. Sauerbrey, all Patrolmen who were dismissed from this Department on June 25, 1964; Seymour Friedman, a former patrolman, who resigned January 6, 1959; Walter Z. Teleky, retired patrolman January 31, 1956; and with various known gamblers, gamblers, their associates and employees, to aid, abet and assist said known gamblers, gamblers, their associates and employees

in unlawfully carrying on, in the City of New York, their gambling operations; and, in furtherance of said conspiracy, did, in fact, meet and consort with, at various locations within the City of New York, said known gamblers, gamblers, their associates and employees, including: Alfred Cupola, alias "Sharkey", B#54987, K.G.#2656; Ramon Marquez, alias "Spanish Raymond", B#420301, K.G. #3220; Gerald Mastriocovo, alias "Jerry", E#34519, K.G. #3802; William Taylor, alias "Kid Dexter", B#308434, K.G.#3219; Skeeter Lorenz, alias "Skeeter", B#354124, K.G.#1163; Clarence Hales, alias "Crappy", B#120757, K.G.#4013; Earl Benton, alias "Earl", B#14780, K.G. #3394; William Vasilou, alias "Bill the Greek", B#559153, K.G.#3154; Gus Baxter, alias "Gus", B#372003, K.G. #3023; Hyman Rapchinsky, alias "Rappy", B#194267; Michael Calabrese, #17587; Rocco Errichetti, E#21586. (R & P 1/1.0, 2/15.0, 2/37.1, 2/63.2, 8/1.0.)

2. Said Patrolman Gardner, while a member of the Police Force of the Police Department of the City of New York, as a part of said conspiracy and in furtherance thereof, together with other members of the Police Department of the City of New York, did wilfully, unlawfully, criminally and corruptly agree to refrain from the honest and faithful performance of his duty as a police officer with respect to the enforcement of the laws of the State of New York regarding gambling, and the said Patrolman Gardner did, in fact, so refrain from the honest and faithful performance of his aforesaid duty.
(R & P 1/1.0, 2/15.0, 2/37.1, 2/63.2, 8/1.0.)

Notice of Appeal to the Supreme Court of the United States

SUPREME COURT
OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index 15178—65

In the Matter of the Application of

ROBERT VINCENT GARDNER,

Petitioner-Appellant,

For an Order Pursuant to Article 78, CPLR,

—against—

VINCENT BRODERICK, as Police Commissioner of the City of New York, and THE CITY OF NEW YORK,

Respondents-Respondents.

I. Notice is hereby given that Robert Vincent Gardner, the Appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment and order of the Court of Appeals of the State of New York, which did Order and Adjudge that the Order of the Appellate Division of the Supreme Court of the State of New York, First Department, be affirmed, and which Order of the Supreme Court of the State of New York, Appellate Division First Department, did confirm the determination

of the Respondents above named, which determination did dismiss the Appellant from his position as Patrolman, New York City Police Department. The said Order of the Court of Appeals was made and entered at the Court of Appeals on July 7, 1967, and the remittitur entered and filed in the office of the Clerk of the County of New York on July 14, 1967 with notice of entry served on counsel for Appellant on July 17, 1967.

This appeal is taken pursuant to 28 U.S.C.A. §1257(2) from the Order of the Court of Appeals of the State of New York where was drawn in question the validity of Article I Section 6 of the New York State Constitution and Section 1123 of the New York City Charter on the ground that they were repugnant to the Constitution of the United States and the decision was in favor of their validity.

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the

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Supreme Court of the United States, and include in said transcript the following:

1. The Notice of Petition and Petition.
2. The Answer & Return.
3. The Reply.
4. The Order of the Appellate Division First Department, February 9, 1967.
5. The Judgment dated March 2, 1967.
6. The Notice of Appeal to the Court of Appeals.
7. The Opinion of FULD, J. in the Court of Appeals.